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12 **UNITED STATES BANKRUPTCY COURT**

13 **DISTRICT OF NEVADA**

14 IN RE:

15 CHRISTOPHER MICHAEL MARINO, and  
16 VALERIE MARGARET MARINO,

17 Debtors

Case No.: 13-50461-BTB

Chapter 7

**STIPULATION TO BIFURCATE  
HEARING**

**Hearing Date: February 19, 2021**

**Hearing Time: 10:00 AM**

18  
19 This Stipulation to Bifurcate Hearing is entered into by and between Debtors,  
20 Christopher Michael Marino and Valerie Margaret Marino (“Debtors”), and Creditor, PHH  
21 Mortgage Corporation formerly known as Ocwen Loan Servicing, LLC (“PHH”), by and  
22 through their respective counsel of record, and concerns the matters set for hearing on February  
23 19, 2021, at 10:00 AM: Debtors’ Motion to Determine Punitive Damages [ECF No. 157] and  
24 PHH’s Amended Motion for Relief from Judgment or Order (Rule 9024) and for New  
25 Evidentiary Hearing [ECF No. 167].

26 This matter arises out of the debtors’ request for sanctions for violation of a discharge  
27 injunction. Following a prior evidentiary hearing, this Court awarded compensatory damages to  
28 Debtors but declined to award punitive damages as it did not believe it had the authority to do

1 so. Both sides appealed. The BAP reversed and remanded on the punitive damages issue for  
2 further findings but affirmed the damages award. The Ninth Circuit dismissed PHH's appeal as  
3 not yet ripe in light of the BAP's remand for fact-finding on the issue of punitive damages.

4 On September 8, 2020, the bankruptcy court reopened the bankruptcy case on remand  
5 from appeal to address the issue of whether punitive damages should also be awarded and, if so,  
6 in what amount. On September 15, 2020, Debtors filed a Motion to Determine Punitive  
7 Damages. Debtors contend the issue of punitive damages can be assessed based on the prior  
8 evidentiary record. PHH disagrees.

9 On October 6, 2020, PHH filed a Motion for Relief from Judgment or Order (Rule 9024)  
10 and for New Evidentiary Hearing ("Motion for Relief"). PHH subsequently filed an Amended  
11 Motion for Relief from Judgment or Order (Rule 9024) and for New Evidentiary Hearing on  
12 October 22, 2020. PHH argues the recent U.S. Supreme Court's ruling in *Taggart v. Lorenzen*  
13 139 S.Ct.1795 (2019) gives rise to the need for the bankruptcy court to re-evaluate its decision  
14 under the proper standard of review, which requires a new evidentiary hearing on compensatory  
15 damages. Debtors disagree with PHH's position.

16 Currently, the Court is scheduled to hear the pending motions on February 19, 2020.  
17 The hearing is also scheduled as the evidentiary hearing on the punitive damages. Presumably  
18 the court would want to take evidence following the law and motion hearing in the event the  
19 Court grants the motion.

20 Within the past few weeks, PHH's trial counsel sustained a back injury, which led to an  
21 emergency surgery. PHH's counsel is recovering, but remains limited in his ability to sit, stand,  
22 and work for long periods at a time. PHH's counsel has been advised by his doctor to avoid  
23 pro longed periods of sitting, standing, or other similar activities for at least the next several  
24 weeks and probably through all of March. PHH's counsel has been warned that activities such  
25 as a long evidentiary hearing could exacerbate symptoms and be detrimental to a full recovery.

26 However, given its shorter duration, PHH's counsel believes he is capable of  
27 participating in the law and motion hearing to resolve: (1) the Rule 60 motion; and (2) the issue  
28 of whether the Court should hear evidence on punitive damages or simply resolve the punitive

damages question based on the record from the prior evidentiary hearing. Under the circumstances, the parties stipulate and agree as follows:

(1) The February 19, 2021 hearing shall proceed on the Rule 60 motion and on the issue of whether and to what extent ~~and separate~~ evidentiary hearing is required on the punitive damages issue ~~with testimony or whether the court will just issue a ruling based on the prior record from the initial evidentiary hearing.~~

(+)(2) If the court denies PHH's Rule 60 motion and determines a hearing on punitive damages is not necessary, the parties will be prepared to argue the issue of whether punitive damages should be awarded and in what amount at the February 19, 2021 hearing.

(-)(3) If the court grants PHH's Rule 60 motion for a new evidentiary hearing, or if the Court believes another evidentiary hearing is required before punitive damages can be assessed, the Court will schedule a date for an evidentiary ~~that~~ hearing in April, 2021, or as soon thereafter as is otherwise convenient for the Court.

In addition to counsel's medical condition, the parties agree that the Court's ruling on the law and motion issues may narrow issues or resolve the need for an evidentiary hearing altogether. Accordingly, the parties also agree there is collateral economic and efficiency benefit to resolution of the law and motion issues before conducting the evidentiary hearing.

IT IS SO STIPULATED.

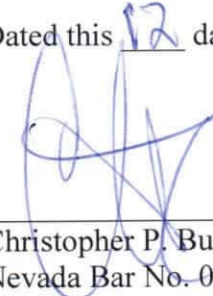
Dated this 12th day of February, 2021.

WRIGHT, FINLAY & ZAK, LLP

/s/ Darren T. Brenner

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Dated this 12 day of February, 2021.

  
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702 Plumas Street  
Reno, NV 89509  
*Attorney for Debtors, Christopher  
Michael Marino and Valerie Margaret  
Marino*

**CERTIFICATE OF SERVICE**

1.  
On February 12, 2021, I served the following document(s):

**STIPULATION TO BIFURCATE HEARING**

2. I served the above-named document(s) by the following means to the persons as listed below:

(Check all that apply)

- a. ECF System (You must attach the "Notice of Electronic Filing", or list all persons and address and attach additional paper if necessary)

SETH J. ADAMS on behalf of Creditor DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR GMACM MORTGAGE LOAN TRUST

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CHRISTOPHER PATRICK BURKE on behalf of Joint Debtor VALERIE MARGARET MARINO

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U.S. TRUSTEE - RN - 7

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☐ b. United States mail, postage fully pre-paid (List persons and addresses. Attach additional paper if necessary)

☐ c. Personal Service (List persons and addresses. Attach additional paper if necessary)

I personally delivered the document(s) to the persons at these addresses:

☐ For a party represented by an attorney, delivery was made by handing the document(s) to the attorney or by leaving the document(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the document(s) in a conspicuous place in the office.

☐ For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

☐ d. By direct email (as opposed to through the ECF System) (List persons and email addresses. Attach additional paper if necessary)

Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ e. By fax transmission (List persons and fax numbers. Attach additional paper if necessary)

Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

☐ f. By messenger (List persons and addresses. Attached additional paper if necessary)

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger for service. (A declaration by the messenger must be attached to the Certificate of Service).

I declare under penalty of perjury that the foregoing is true and correct.

Signed on February 12, 2021.

/s/ Jason Craig

An employee of Wright, Finlay & Zak, LLP